



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
New Jersey State Board of Optometrists
124 Halsey Street, 6th Floor, Newark, NJ 07102



PAULA T. DOW
Attorney General

THOMAS R. CALCAGNI
Director

December 13, 2011

By Certified and Regular Mail

David Lax, O.D.
Campus Eye Group
1700 Whitehorse Hamilton Square Road
Hamilton, New Jersey 08690

Mailing Address:
P.O. Box 45012
Newark, NJ 07101
(973) 504-6440

RE: Modified Offer of Settlement in Lieu of Filing a Formal Disciplinary Complaint

Dear Dr. Lax:

This letter is to advise you that the New Jersey State Board of Optometrists ("Board") has had an opportunity to review information concerning a complaint filed against you by A. L. Specifically, the information reviewed informed the Board that A.L. had an eye examination and requested to be fit with contact lenses but she did not want to purchase the contact lens package from the optometrist's office

On July 6, 2008 an investigative inquiry was held which you attended Pro. Se. It was your testimony that you conducted an eye examination on A.L. on August 10, 2007 at the Campus Eye Group office in Hamilton NJ. You also informed the Board that you are one of six optometrists that work in this practice. On this date you also fit the patient with Oasis contact lenses and requested that she return for a two week follow up. The patient record indicated that she purchased a six month supply of the contact lenses. You also testified that the charges for the contact lens packages available for purchase in this office were explained to the patients by the technicians employed at the office and not directly by the optometrists. You did not have any conversation with this patient regarding the costs of the contact lenses. The record reflected \$240.00 as the charge for a six month package of Oasis contact lenses.

It was your testimony that upon learning from an employee in the office that A.L. was unhappy because she was not interested in purchasing the contact lenses from the practice, you agreed to return the cost of the contact lenses to the patient minus the contact lens fitting fee. Because the patient was irate you also provided the patient with a copy of the contact lens prescription without doing a follow up check of the fit of the lenses which is contrary to the standard practice of optometry and a violation of N.J.A.C. 13:38-6.1(c)1.

Upon questioning, you confirmed that the patient records did not contain your initials for any of the visits that you examined this patient. The record was also missing the initials of the person who dispensed the contacts as required by N.J.A.C. 13:38-2.3(b)10.

Upon review of all available information, the Board has preliminarily found that probable cause exists to support a finding that your conduct demonstrates failure to comply with board regulations in violation of N.J.S.A. 45:1-21(h) in that a review of the patient record demonstrates that your initials did not appear on the patient record for the visits that services were performed to this patient in violation of N.J.A.C. 13:38-2.3(b)10.

At this juncture, the Board has preliminarily concluded that the above violations are sufficient to warrant the initiation of formal disciplinary proceedings against you. Notwithstanding that decision, however, the Board has determined that it will first offer you an opportunity to settle this matter, and thereby avoid the initiation of disciplinary proceedings, should you consent to:

1. You are reminded that failing to perform a complete fitting and follow up on contact lenses on patients before releasing the contact lens prescription is in violation of N.J.A.C. 13:38-6.1(c)1.

2. You are reminded that in a practice consisting of multiple providers the initials of the optometrist performing the treatment and the name of the person dispensing eyeglasses or contact lenses to the patient must be included in the patient record as required by N.J.A.C. 13:38-2.3(b)10.

3. Pay a civil penalty in the amount of one thousand (\$1000.00) dollars (to be paid immediately upon your signing of the acknowledgment at the bottom of this letter) for violation of N.J.S.A. 45:1-21(h) and N.J.A.C. 13:38-2.39(b)10. Payment is to be remitted by money order or certified check, payable to the Board of Optometrists and sent to the attention of Lisa Affinito, Executive Director, Board of Optometrists, P.O. Box 45012, Newark, New Jersey 07101.

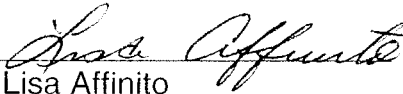
4. Pay the costs of the investigative inquiry in the amount of two hundred forty four (\$244.00) dollars as set forth in the certification of Lisa Affinito attached hereto.

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. Upon your signature, this letter will be a matter of public record.

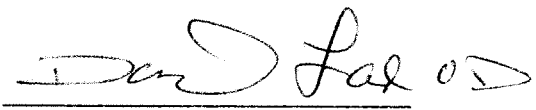
In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of appropriate enforcement action. In such event, you will be afforded an opportunity to defend against the alleged violations. If an evidentiary hearing is deemed warranted the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event formal charges are filed, the Board may assess civil penalties in an amount greater than that herein offered in settlement should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order, requiring you to reimburse certain monies and/or requiring you to pay further costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer herein, I suggest that you contact Deputy Attorney General Carmen A. Rodriguez who may be reached at (973) 648-3696.

If you elect to settle this matter presently, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of appropriate enforcement proceedings.

NEW JERSEY STATE BOARD OF
OPTOMETRISTS

By: 
Lisa Affinito
Executive Director

ACKNOWLEDGMENT: I, David Lax, O.D., hereby acknowledge that I have read and reviewed the settlement proposal set forth in the above letter. I acknowledge the conduct which has been charged. I am aware that, by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board herein is a matter of public record, and that this letter is a public document. I hereby agree to pay a penalty in the amount of \$1000.00 and costs in the amount of \$244.00 for a total of \$1244.00 (to be paid upon signing of this acknowledgment).


David Lax, O.D.

Dated:

cc: Carmen A. Rodriguez, Deputy Attorney General